



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,709	01/28/2004	Bryan Flaherty	021956-000410US	5642
20350	7590	05/08/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			ROSENBERGER, RICHARD A	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,709

Applicant(s)

FLAHERTY ET AL.

Examiner

Richard A. Rosenberger

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-66 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/27/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-27, 44-46, and 63, drawn to a sensor intended to be replaced and disposed of with a relationship to an optical apparatus for using the sensor for gas analysis, classified in class 356, subclass 437.
 - II. Claims 28-39, drawn to a sensor element with a "use limitation means", classified in class 340, subclass 540.
 - III. Claims 40-43, drawn to a sensor element with a sealing means sealing an entry port prior to use, classified in class 422, subclass 58.
 - IV. Claims 47-50, drawn to a sensor and housing containing a "sample conditioning unit", such as a desiccant, classified in class 422, subclass 56
 - V. Claims 51-52, drawn to a sensor in a housing with means to limit the diffusion of the sample, classified in class 356, subclass 440.
 - VI. Claims 53-59, drawn to a combination of a sensor and calibration information, classified in class 250, subclass 252.1.
 - VII. Claims 60-62, drawn to a sensor element packaged with a "storage compound", such as a desiccant, classified in class 422, subclass 58.
 - VIII. Claims 64-66, drawn to a sensor with a housing having means to protect a transparent window on a housing, classified in class 359, subclass 507.
2. The inventions are distinct each from the other because of the following reasons:

The Inventions of the various groups are generally related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct

if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, each of the subcombinations have there own separate utility and none required the others for their own utility. For example, the combination of group I does not require the “use limitation means” of group II, which does not require for its utility the sealing means of group III, the “sample conditioning means” of group IV, the diffusion limiting means of group V, the inclusion of calibration information as in group VIII, the “storage compound” of group VII, nor the window protection means of group VIII. Similarly for groups II through VIII; the system of group I does not require the details of any of these groups, and none of these groups require the details o the others for there operation or utility.

3. Because these inventions are independent or distinct for the reasons given above and have a separate status in the art because of their recognized divergent subject matter, and because this divergent subject matter would be expected to require separate consideration and treatment during examination, restriction for examination purposes as indicated is proper.


4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even if the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

Art Unit: 2877

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger
2 May 2006



Richard A. Rosenberger
Primary Examiner